

Remarks

Claim 33 is herein amended to correct a clerical error. Support for amendment to claim 33 is found in claim 33 as filed.

No new matter has been added, and no new material presented that would necessitate an additional search on the part of the Examiner. Claims 27-38 are pending herein.

Claims comply with 35 U.S.C. §103(a)

The Office action on p. 3 ¶4 rejects claims 27, 29-34, and 36-38 under 35 U.S.C. ¶103(a) in view of McKissick (European patent application number EP 1458193, published September 15, 2004) in combination with Brunet (U.S. patent number 5,995,590, issued November 30, 1999).

The Office action on p. 9 ¶5 rejects claims 28 and 35 under 35 U.S.C. ¶103(a) in view of McKissick (European patent application number EP 1458193, published September 15, 2004) in combination with Brunet (U.S. patent number 5,995,590, issued November 30, 1999) and O'Neal (U.S. patent number 6,711,154, issued March 23, 2004).

Applicants respectfully traverse. For a reference to be used in a 35 U.S.C. §103(a) rejection, the reference must qualify as prior art under 35 U.S.C. §102. McKissick is not proper prior art under any section of 35 U.S.C. §102 and therefore cannot be used in a 35 U.S.C. §103(a) rejection, as shown below.

McKissick is a European patent application, i.e., a patent application filed in a foreign country. A patent application filed in a foreign country is available as a prior art reference only under 35 U.S.C. §102(a) or 102(b). See 35 U.S.C. §102. For convenience of the reader, 35 U.S.C. §102(a) and 102(b) state:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent, or

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States ... 35 U.S.C. §102(a) and 102(b), [emphases added]

For purpose of availability as a prior art reference under 35 U.S.C. §102, a published patent application that was filed in a foreign country is a printed publication, and is available as a prior art reference only as of the date it was published. Therefore the date that McKissick is available as a prior art reference under 35 U.S.C. §102, viz., the date that it was published, is September 15, 2004.

Further, the present application was filed August 13, 2001. Thus the present application was filed over three years before McKissick was published, and thus McKissick is not proper prior art under 35 U.S.C. §102(a) or 102(b). Therefore McKissick is not proper prior art under any section of 35 U.S.C. §102.

Because McKissick does not qualify as proper prior art under 35 U.S.C. 102, this reference cannot be used under 35 U.S.C. §103(a) in combination with any other reference, including Brunet and O'Neal. Therefore rejection of claims 27-38 under 35 U.S.C. §103(a) can be withdrawn, an action which is respectfully requested.

#### Summary

On the basis of the foregoing reasons, Applicants respectfully submit that the pending claims are in condition for allowance, which is respectfully requested. If there are any questions regarding these remarks, the Examiners are invited and encouraged to contact Applicants' representative at the telephone number provided.

Respectfully submitted,



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